IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 866 OF 2007

IN

S.C.SUIT NO. 3072 OF 2007

WITH

CIVIL APPLICATION NO. 1194 OF 2007

Smtl Hemaxi Atul Joshi ... Appellant
(Org.Deft.No.1)

Vs.

Smt. Muktaben Karsandas Joshi & Anr. Respondents
(Resp.No.1 - org.Plff
& Resp.No.2 - org.
Defendant nO.2)

Mr.Jaydev Trivedi, Advocate, for the appellant.

Mr.Nitin Vhatkar, Advocate, a/w G.S.Hiranandani,Advocate for respondent No.1.

Mr. Prajit S.Manjarekar, Advocate, for respondent No.2.

CORAM: J.H.BHATIA,J.

DATE: 5th December,2007.

P.C.

1. Heard learned Counsel for the parties.

2. Admittedly, the appellant, who is defendant No.1, was married to respondent No.2 sometime in the year 1996 and out of this wedlock, they have two children. After the marriage, they were living in the suit house with the other family members. The relations between the husband and wife got strained and the Marriage Petition for divorce was filed by respondent No.2-husband against the present appellant before the Family Court at Bandra, Mumbai. Plaintiff/Respondent No.1, who is the mother of respondet No.2 and mother-in-law of the appellant, claims that she is the exclusie owner of the suit house and her son and daughter-in-law after the marriage, were living with her in her house. However, in the year 2002, the appellant and respondent No.2 purchased another flat at a short distance from her house and intermittently they also used to live there. Respodent No.1 claims that she and other family members had noticed illicit relationship of the appellant with some other person. This was objected to by her and therefore relations were strained. According to her, the daughter-in-law went to her parents' place at Surat in May 2007 after the Divorce Petition was filed. However, in the last week of May, 2007, she came back to Mumbai and forcibly entered into

the plaintiff's house and started harassing the plaintiff and her family members. She also abused the plaintiff in filthy laguage and assaulted her. In view of these circumstances, she filed the suit for perpetual injunction restraining the defednants from entering into and/or occupying and/or remaining in occupation of the suit premises belonging to her. She also took out a Notice of Motion seeking temporary injunction of the same nature. The application was opposed by the present appellant on the ground that the suit house is the matrimonial home and she is entitled to reside there in view of the Protection of Woman from Domestic Violence Act, 2005 (in brief, "Domestic Violence Act").

3. After hearing the parties, the learned Judge of the City Civil Court accepted the contention of the plaintiff and rejected the contention of the defendant No.1-appellant that it is a shared household for the appellant. The learned Judge held that the suit house being the exclusive property of the mother-in-law/plaintiff, the daughter-in-law cannot claim any legal right of residence. In the result, the Notice of Motion was allowed and the temporary injunction was granted against the defendant No.1-appellant. Hence, she has preferred the present Appeal.

4. On perusal of the pleadings of the parties and the impugned order, it becomes clear that the suit house was purchased by the plaintiff/mother-in-law sometime in 1975 and, admittedly, the suit house stands in her name alone. There is nothing to show that it is a joint family property of the plaintiff, her husband and the children. Admittedly, it is not the house belonging to the appellant or her husband. The learned trial Court relied upon an authority of the Supreme Court in **S.R.Batra vs. Taruna Batra AIR 2007 SC 1118** wherein the provisions of the Domestic Violence Act, 2005 came to be considered.

5. Section 19 of the Domestic Violence Act provides protection of residence to the aggrieved person. Section 19(a) reads as under :-

> "19. Residence orders (1) While disposing of an application under sub-sectiino (1) of sectiin 12, the Magistrate may, on being satisfied that domestic violance has taken place, pass a residence order -
>
> (a) restraining the resondent from dispossessing or in any other manner disturbing the possesion of the aggrieved person from the shared household, whether or not the respondent has a

> legal or equitable interest in the shared household;
>
> ....."

Under Section 2(a) of the Domestic Violence Act, "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violece by the respondent".

. Section 2(q) defines"respondent" as any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

. Section 2(s) defines "shared household" as follows :-

> "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or

along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title,interest or equity and includes such a household which may belong to the joint famly of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

5. The question is whether merely because the appellant/daughter-in-law was living along with husband in the household of her mother-in-law, she would get a legal right of residence in the house of mother-in-law. Admittedly, the appellant and her husband-respondent NO.2 had purchased another flat in December, 2002 jointly. It is not disputed that intermittently the husband and wife used to sleep and stay in that house. That house is at a walking distance of about 5 minutes from the suit house. The appellant can claim legal right in that house firstly, because it is the joint property of herself and her husband and secondly, because she was intermittently living or at least staying in that house along with her husband and

children. As far as the suit house is concerned, it is not the property in which her husband has got any legal right and therefore she cannot claim that the suit house is the shared household within the meanig of Section 2(s) of the Domestic Violence Act. After referring to the provisons of the Domestic Violece Act and some case law, Their Lordships of the Supreme Court in the case of **S.R.Batra vs. Taruna Batra,** observed as follows in para 16 of the Judgment :-

> "16. There is no such law in India, like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law."

From this, it is clear that the wife may have rights only against the husband and not againat father-in-law or mother-in-law. Their Lordships further observed as follows :-

> "28. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of

> which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband is a member. It is the exclusive property of appellant No.2, mother of Amit Batra. Hence it cannot be called a 'shared household'.

The facts in the case of S.R.Batra and the present matter are almost similar. Taking into consideration the legal position and the facts, the appellant cannot claim any legal right of residence in the house belonging to her mother-in-law. She can claim such right only in the house of her husband and incidentally in the present case, she and her husband jointly own another house at a short distance from the suit house. Taking into consideration all the facts and circumstances, the learned trial Court Judge was justified in passing the order of temporary injunction restraining the defendant-appellant from entering into the suit house and causing interference in possession of her mother-in-law on the suit house.

6. In the result, the Appeal stands dismissed.

7. As the Appeal itself is dismissed, the Civil

Application does not survive and stands disposed of accordingly.

(J.H.BHATIA,J.)